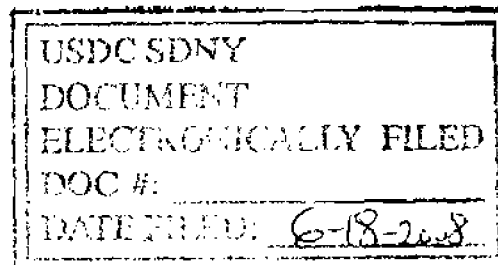


*Keenan, J*

Norman C. Kleinberg  
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William J. Beausoleil  
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*Attorneys for Defendant Merck & Co., Inc.*



UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X  
IN RE: :  
Fosamax Products Liability Litigation : 1:06-md-1789 (JFK)

-----X  
*This Document Relates to:*  
Robert Wilson Fraize :  
v. Merck & Co., Inc. :

Case No: 1:08-cv-01896-JFK  
-----X

**STIPULATION AND ORDER OF DISMISSAL WITHOUT PREJUDICE**

IT IS HEREBY STIPULATED AND AGREED by and between Plaintiff

Robert Wilson Fraize and Defendant Merck & Co., Inc., ("Merck") through their  
respective undersigned counsel, as follows:

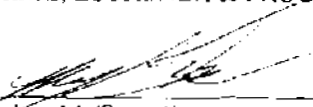
1. This case, having been resolved upon the agreement of Plaintiff to  
voluntarily dismiss without prejudice his claims against Defendant and the agreement of  
Defendant not to seek from Plaintiff its fees and costs, is hereby dismissed without  
prejudice pursuant to Fed. R. Civ. P. 41(a)(1)(ii).

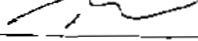
2. Plaintiff further agrees to re-file any suit based on any similar claims  
related to Fosamax against Merck, any of Merck's subsidiaries, agents, distributors,  
employees, sales representatives, or against any pharmacy in this Court, without joining  
any party whose joinder would defeat diversity pursuant to 28 U.S.C. § 1332.

3. Each party is to bear its own costs and attorneys' fees.

LEVIN, PAPANTONIO, THOMAS,  
MITCHELL, ESCHSNER & PROCTOR,  
P.A.

HUGHES HUBBARD & REED LLP

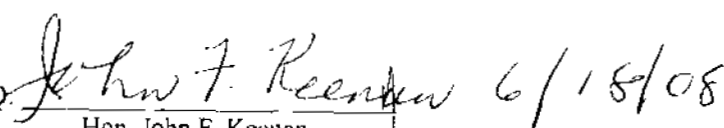
By   
Meghan M. Tans, Esq.  
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By   
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*Attorneys for Plaintiff*

*Attorneys for Defendant Merck & Co., Inc.*

SO ORDERED.

  
Hon. John F. Keenan